

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**VIRGINIA BARRERA,**

**Plaintiff,**

**V.**

**MTC, INC. d/b/a  
MI TIERRA CAFÉ AND BAKERY,**

**Defendant.**

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**CIVIL ACTION NO. 5:10-CV-665 XR**

**DECLARATION OF MARK W. KIEHNE IN SUPPORT OF  
ATTORNEYS' FEES AND EXPENSES**

1. I, Mark W. Kiehne, declare and state as follows:
2. I am an attorney with the law firm of Davis, Cedillo & Mendoza, Inc., counsel of record for MTC, Inc. ("MTC") in this matter. I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would testify competently thereto.
3. On July 20, 2011, counsel for MTC noticed the deposition of Plaintiff Javier Andrade for July 27, 2011. Plaintiff Andrade failed to appear and MTC took its first certificate of non-appearance.
4. On September 2, 2011, counsel for MTC again noticed the deposition of Plaintiff Andrade for September 7, 2011. Again, Plaintiff Andrade failed to appear and MTC took its second certificate of non-appearance.
5. Based on the failure to appear for his deposition, Defendants moved to dismiss Plaintiff Andrade. Magistrate Primomo, after review of the Motion for Sanctions, recommended

that Plaintiff Andrade be dismissed and that he pay the reasonable expenses, including attorney's fees, incurred by MTC in preparing for and attending the deposition of Plaintiff Andrade because of his failure to appear; and further requested that MTC provide a verified statement of those expenses to the District Court.

6. In response to Court's request for a verified statement of expenses, I am providing this declaration attesting to the reasonableness of attorneys' fees of Ricardo G. Cedillo and Mark W. Kiehne related to the preparation and attendance for the deposition of Plaintiff Javier Andrade because of his failure to appear, which are set forth below:

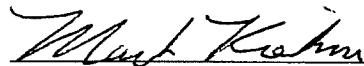
|    |                      |                                       |
|----|----------------------|---------------------------------------|
| 7. | Ricardo G. Cedillo - | \$750 (1 hour x \$750/hour)           |
|    | Mark W. Kiehne -     | <u>\$625</u> (2.5 hours x \$250/hour) |
|    | Total                | \$1375                                |

8. In addition, MTC incurred an additional expense in the amount of \$151.75 for the court reporter's certificate of non-appearance of Plaintiff Javier Andrade.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 1, 2012

DAVIS, CEDILLO & MENDOZA, INC.

  
Mark W. Kiehne

# INVOICE

GULFSTREAM LEGAL COURT REPORTING  
HOUSTON  
(713) 354-2339 Fax (713) 237-8742  
San Antonio / Austin, TX  
Phone:210-490-6444 Fax:210-579-6507

Mr. Ricardo G. Cedillo  
Davis, Cedillo & Mendoza  
755 E. Mulberry Ave., # 500  
San Antonio, TX 78212

| Invoice No.                   | Invoice Date | Job No. |
|-------------------------------|--------------|---------|
| 95010                         | 8/15/2011    | 39671   |
| Job Date                      | Case No.     |         |
| 7/27/2011                     | 510CV665XR   |         |
| Case Name                     |              |         |
| Virginia Barrera vs. MTC, Inc |              |         |
| Payment Terms                 |              |         |
| Due upon receipt              |              |         |

Original and one copy of the oral deposition of:

Vanessa Michelle Barrera

(TAXABLE \$713.55)

Certificate of non-appearance of:

Javier Andrade

(TAXABLE \$151.75)

151.75

**TOTAL DUE >>>**

AFTER 9/14/2011 PAY

INVOICE DUE UPON RECEIPT AND IS NOT CONTINGENT UPON CLIENT PAYMENT.

For billing questions, please call (713) 354-2336.

**(-) Payments/Credits:**

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Mr. Ricardo G. Cedillo  
Davis, Cedillo & Mendoza  
755 E. Mulberry Ave., # 500  
San Antonio, TX 78212

Invoice No. : 95010  
Invoice Date : 8/15/2011  
Total Due : ~~1229.92~~

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**1300 Texas Ave.**  
**Houston, TX 77002**

Job No. : 39671  
BU ID : 6-ALL  
Case No. : 510CV665XR  
Case Name : Virginia Barrera vs. MTC, Inc